

1 THE HONORABLE JUDGE RICARDO S. MARTINEZ
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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10 BACKPAGE.COM, LLC,

11 Plaintiff,

12 -vs-

13 ROB MCKENNA, Attorney General of the State of
14 Washington, et al.,

15 Defendants.

16 NO. C12-00954-RSM

17 DEFENDANT KITSAP
18 COUNTY PROSECUTING
ATTORNEY RUSSELL D.
HAUGE'S MOTION FOR
DISMISSAL PURSUANT TO
FED.R.CIV.P. 12(b)(6)

**NOTE ON MOTION
CALENDAR: JULY 20, 2012**

20 **I. Motion**

21 Comes now Defendant Kitsap County Prosecuting Attorney, Russell D. Hauge, by and through
22 his attorney of record, Chief Deputy Prosecuting Attorney, Ione S. George, and moves for dismissal of
23 any/all 42 U.S.C. Section 1983 claims against him, as Plaintiff has failed to state a claim upon which
24 relief can be granted. This motion is based upon the records and files herein, and Fed.R.Civ.P.
25 12(b)(6).

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28 KITSAP COUNTY PROSECUTING ATTORNEY
RUSSELL D. HAUGE'S MOTION FOR DISMISSAL
PURSUANT TO FED.R.CIV.P. 12(b)(6)
(C12-00954-RSM)-- 1

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083
www.kitsapgov.com/pros

II. The Complaint

In its Complaint, the Plaintiff alleges multiple violations of both Federal Statutes and Constitutional rights and sets forth three distinct claims, pursuant to 42 U.S.C. §1983, for these alleged violations. By means of factual support for these claims, at page 5, line 25, the Plaintiff's Complaint begins a three-page section entitled "Factual Allegation."

However, at no point in this factual narrative, nor in any other section of the Complaint, is Prosecutor Russell D. Hauge identified. Neither, at any point in the Complaint, is any act of Kitsap County Prosecutor Russell D. Hauge identified or described. Indeed, absent the caption and the identification of the parties, no reference to Prosecutor Hauge is made in the entirety of the Complaint.

III. Fed.R.Civ.P. 12(b)(6)

“Upon a motion to dismiss under Fed.R.Civ.P. 12(b)(6), the Court limits its review to the allegations of material fact set forth in the complaint, which are taken to be true and viewed in the light most favorable to the non-moving party together with all reasonable inferences therefrom.¹ Dismissal can be based on both the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.² Conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss, and need not be accepted as true.³ “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations (citations omitted), a plaintiff’s obligations to provide the “grounds” of his “entitlement’ to relief” requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”⁴

¹Pierce v. NovaStar Mortg., Inc. 422 F.Supp.2d 1230, 1233 (2006), citing, Pareto v. FDIC, 139 F.3d 696, 699 (9th Cir.1998)

² *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir.1990).

³ Id.; see also, *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir.1992),.

⁴ *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 l.Ed.2d 929 (2007), quoting, *Sanjuan v. American Bc. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (C.A.7 1994).

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1 Because the Complaint contains no allegations of material fact regarding Prosecutor Hauge or
 2 any action he may have taken, the Complaint is void of any grounds upon which to base the Plaintiff's
 3 claimed entitlement to relief pursuant to 42 U.S.C. § 1983.
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5 It is required that a complaint include "a short and plain statement of the claim that will give the
 6 defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Lee v. City of*
 7 *Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). To succeed in a 42 U.S.C. § 1983 action against an
 8 individual, a plaintiff must establish that a defendant was acting under color of state law and that the
 9 defendant deprived him "of a right, privilege or immunity secured by the constitution or laws of the United
 10 States." *Kildare v. Saenz*, 325 F.3d 1078, 1086 (9th Cir. 2003). Therefore, in its Complaint, Backpage.com
 11 was required to "plead specific facts and allege a cognizable constitutional violation in order to avoid
 12 dismissal for failure to state a claim." *Mills v. Criminal District Court*, 837 F.2d 677, 678 (5th Cir. 1988).

13 Here, Plaintiff's Complaint fails to meet this minimal standard. The Complaint fails to allege any
 14 constitutional violation that the Plaintiff has suffered, and similarly, is void of any reference as to how
 15 Prosecutor Hauge may have caused any such violation. Clearly, such a general claim does not sufficiently
 16 allege a *cognizable* constitutional violation, nor does it provide Defendant Hauge with fair notice of what
 17 actions he must defend.

18 Because Plaintiff has failed to identify act committed under the color of law by Prosecutor Hauge
 19 which caused a constitutional violation or deprived it of a right secured by law, any and all claims filed
 20 against Prosecutor Hauge, pursuant to 42 U.S.C. §1983, must be dismissed. Similarly, Plaintiffs' request
 21 for reasonable costs and attorneys' fees pursuant to 42 U.S.C. §1983 must be dismissed, and no award of
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fees or costs against Prosecutor Hauge be imposed.⁵

IV. Conclusion

Based upon the foregoing, Defendant Kitsap County Prosecuting Attorney Russell D. Hauge respectfully requests that any and all 42 U.S.C. §1983 claims and/or requests for fees and costs against him be dismissed with prejudice, as Plaintiff has failed to state a claim upon which relief can be granted.

Respectfully submitted this 15th day of June, 2012.

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney

By: /s/ Ione S. George
IONE S. GEORGE
WSBA No. 18236
Chief Deputy Prosecuting Attorney
Attorney for Defendant Russell D. Hauge,
Kitsap County Prosecuting Attorney

⁵ Specifically, if Plaintiff prevails on any request for declaratory judgment or other injunctive relief, no award of fees against Defendant Hauge pursuant to 42 U.S.C. §1983 may be imposed, as Plaintiff has failed to state a 42 U.S.C. §1983 claim against Prosecutor Hauge upon which relief can be granted.

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CERTIFICATE OF SERVICE

I certify that on June 15, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

<p>Ambika K. Doran DAVIS WRIGHT TREMAIN (SEA) 1201 Third Ave. Ste. 2200 Seattle, WA 98101-3045 206.757.8030 ambikadoran@dwt.com</p>	<p>James C. Grant DAVIS WRIGHT TREMAIN (SEA) 1201 Third Ave. Ste. 2200 Seattle, WA 98101-3045 206.757.8096 jamesgrant@dwt.com</p>
<p>David J. Eldred DANIEL T. SATTERBERG King County Prosecuting Attorney Civil Division, Litigation Section 900 King County Administration Building 500 Fourth Avenue Seattle, WA 98104 david.eldred@kingcounty.gov</p>	<p>Venkat Balasubramani, WSBA #28269 FOCAL PLLC 800 Fifth Ave., Ste. 4100 Seattle, WA 98104 Tel: (206) 529-4827 Fax: (206) 260-3966 venkat@focallaw.com</p>
<p>Matthew Zimmerman (<i>pro hac vice</i> pending) ELECTRONIC FRONTIER FOUNDATION 454 Shotwell Street San Francisco, CA 94110 Tel: (415) 436-9333 Fax: (415) 436-9993 mattz@eff.org</p>	

EXECUTED this 7th day of June, 2012 at Port Orchard, Washington.

Carrie Bruce

CARRIE BRUCE, Paralegal
Kitsap County Prosecutor's Office
614 Division Street, MS 35-A
Port Orchard, WA 98366
360-337-4992
cbruce@co.kitsap.wa.us

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